

To: Manville, Jennifer[manville.jennifer@epa.gov]
From: Hanson, Kristen
Sent: Mon 8/8/2016 6:15:40 PM
Subject: FW: FYI ceded territory mining rule call today FW: Announcement: Call with EPA to discuss new financial assurance rule CERCLA 108b - removed.txt
[GLIFWC Call Agenda 8-8-16 ec.docx](#)
[tribal treaty rights guidance for discussing tribal treaty rights.pdf](#)
[108b consultation notice.pdf](#)

Dee asked a briefing to our Voight Reps.

This is what I sent.

From the Region is Krista McKim

HQ =8 people

Kristen

From: Hanson, Kristen
Sent: Monday, August 08, 2016 11:11 AM
To: Chapman, Eric; Mitchell, Frank; Johnson, John
Cc: Allen, Dee; Moran, Patricia
Subject: FYI ceded territory mining rule call today FW: Announcement: Call with EPA to discuss new financial assurance rule CERCLA 108b -

Good Morning Gentlemen,

The EPA is developing a 108b CERCLA rule that may have ceded territory implications. The rule will require any mining operation to have financial assurance (cash in the bank) to cover any future environmental damage. This rule has been in development for several years. In the past, ceded territory or tribal resources were NOT included or valued. This has changed after EPA's February 2016 Policy Guidance on Treaty Rights (attached). A call on this rule is scheduled at 1 pm today. A call agenda is attached.

The conference line information is:

Conference Line: 1-866-299-3188

Code: 202-564-1478

Back Ground Information

CERCLA 108(b)

The CERCLA law “Superfund” of 1980 includes Section 108(b) which directs EPA to develop financial responsibility rulemaking. In 2009 EPA was forced to initiate this rulemaking through court decisions. Again in 2016, EPA was forced through court to move forward on financial responsibility rulemaking, specifically on hardrock mining. EPA is currently under a January 2016 US Court of Appeals District of Columbia Circuit Court order establishing a schedule for rulemaking proceedings under CERCLA 108(b) and requires EPA to sign a notice of proposed rulemaking for the hardrock mining industry by December 1 2016 and to take final action by December 2017.

Currently EPA has initiated consultation on the proposed CERCLA 108(b) rulemaking. The consultation period is June 15, 2016 – August 15, 2016. A Tribal Only webinar was scheduled for June 22nd. Although difficult to locate, after some digging, I was able to access the Tribal only consultation webinar at: <https://clu-in.org/conf/tio/108bTribalConsultation/>. Tribal Participation in this call seemed to be just a couple a best.

After several Tribal Questions, There was some traction during this webinar to value ceded territory resources including inclusion of tribal resources in a similar fashion to NRDA valuation. In subsequent conversations with Esteban, ecosystem valuations are being considered. The webinar presenters were not aware of the February 2016 Treaty Rights Guidance for Consultation and were willing to take suggestions on how to implement the EPA Policy.

How this is good for us

The rule requires federal financial assurance of mining companies.

Opportunities for the federal hook

A quick review found a couple federal hook opportunities

- 1) It appears that Tribes can hold their own financial liability requirements that are recognized by EPA. There may be some timeframe considerations (in place before final rule propagation). This gives us the chance for polluters to provide Tribal financial assurance now (cash in the bank) instead of starting a NRDA claim later.
- 2) Ceded Territory Tribal Treaty Resources could be included in the financial responsibility determination. For example, Tribal Treaty resources could be fiscally leveraged against a mine proposed or operating in or near ceded territory. This holds even more bearing after the recent EPA Tribal Treaty Rights Guidance on Consultation with Tribes.
- 3) This 108b rulemaking applies to many industries. Mining was just the first to get the financial liability rule applied to it, partially because the mining industry utilizes most of the Superfund Cleanup dollars. This process will be replicated for many more industries. It would be good to set the stage early and include Tribal Interests from the very first financial liability rulemaking so that Tribal Interests are present for all of the other polluting industries.

Kristen Hanson

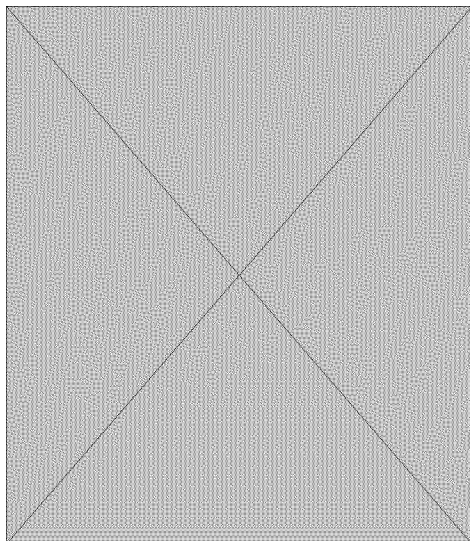
Environmental Specialist

Tribal Natural Resource Department

Lac du Flambeau Band of Lake Superior Chippewa Indians

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From: Esteban Chiriboga [<mailto:esteban@glifwc.org>]

Sent: Thursday, August 04, 2016 2:50 PM

To: Dawn White; amorin.mello@redcliff-nsn.gov; Chapman, Eric; Ann McCammon_Soltis; Beth Spedowski; Betina Warner; Bill Latady; Brandy Toft; Charlie Lippert; Chuck Brumleve; Cody Charwood; Danny J. Tadgerson; Darren Vogt; Allen, Dee; Douglas G. Cox; Edith Leoso; Elisse Aune; Erin Johnston; Ervin Soulier; giiwegiizhiigookway Martin; Jeff Mears; Jenilynn Bohm; Jennifer Godwin; Jessica Koski; Jessica Strand; Jim Thannum; John Coleman; Kari Hedin; Hanson, Kristen; Larry Balber; Linda Nguyen; Lissa Radke; Margaret Watkins; Mic; Mike Ripley; Nancy Schuldt; Naomi Tillison; Natalene Cummings; Nate Guldán; Nathan Kilger; Nathan Podany; Paul Ripple; Rick Gitar; Sandra Gokee; Shannon Judd; Stan Ellison; Stuart Oberg; swieting; Tina VanZile; Tod Legarde; Tyler Kaspar; Vicky Rasky; Victoria Flowers; Walter Cox; Wayne DuPuis

Cc: Jen Vanator; Snyder, Jessica

Subject: Announcement: Call with EPA to discuss new financial assurance rule CERCLA 108b

Hello everyone,

Below is the announcement and call information for the CERCLA 108b conference with EPA. Please contact me or Jessica Snyder at EPA with any questions.

thanks

esteban

Good afternoon,

As we discussed, this email is to confirm our conference call with you and others from Great Lakes Indian Fish and Wildlife Commission on Monday, August 8, 2016 at 2:00pm EDT (1:00 Central) to discuss the CERCLA 108b Financial Responsibility Proposed Rule. Sonya Sasseville, Director for the Office of Resource Conservation and Recovery Program Implementation and Information Division will lead the discussion, and we will leave a good portion of the time for questions and answers.

The conference line information is below and included on the attached agenda.

Conference Line: 1-866-299-3188
Code: 202-564-1478

Please let me know if you have any questions or comments, or need any special arrangements set up for the call.

As a reminder, the email for submitting comments on this action is:
CERCLA108b_FRTC@epa.gov. If you would like us to resend a copy of the PowerPoint presentation, which you may have previously seen on the June 22 webinar, please let me know and I will send to you.

Looking forward to talking on Monday and feel free to forward this agenda and email to others.

Sincerely,

Jessica Snyder

Jessica Snyder

Office of Land and Emergency Management

Tribal Program Coordinator

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-- Esteban Chiriboga Environmental Specialist Great Lakes Indian Fish and
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